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No. 636

In the Supreme Court of the United States

OCTOBER TERM, 1935

JAMES WALTER CARTER, PETITIONER

v.

CARTER COAL COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL BRIEF FOR RESPONDENT GOVERNMENT OFFICERS RE BRIEF FILED AMICUS CURIAE ON BEHALF OF 31 ALABAMA BITUMINOUS COAL PRODUCERS

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The Government submits that this Court should disregard the brief filed by Forney Johnston as *amicus curiae* on behalf of 31 producers of bituminous coal in Alabama, upon the ground that the brief does not deal with questions presented in the above case (No. 636), but discusses questions of law and fact which are at issue in a suit now pending in the United States District Court for the Northern District of Alabama, in which these 31 Alabama producers are attacking the constitutionality of the Bituminous Coal Conservation Act of 1935. This

amicus curiae brief predicates its discussion of the constitutional validity of that Act upon numerous averments of fact which are neither facts of which this Court may take judicial notice nor facts disclosed by the record in No. 636.

The brief frankly avows its scope. It states (p. 8) that it "is confined entirely to a discussion of the impact of actual administrative action under color of the Act upon the constitutional rights of the plaintiff and interveners in the Alabama suit." The brief also states (p. 4) that the "administrative acts and tax demands shown in the Alabama suit support the averments of the suit in the District of Columbia." The brief in effect asks this Court (1) to accept as true and accurate various factual statements made therein which, however, have as their only authority the averments of the pleader in the Alabama litigation or unsupported statements in the brief itself, and (2) to consider and decide the constitutional questions which are before the Court in the light of such factual statements.

How completely untrustworthy these alleged factual statements may be is illustrated by comparing what the brief describes (p. 4) as one of the "actual occurrences or overt actions" which had "taken place" under color of the code or of the Act, with what in fact transpired in this matter. The brief states (*ib.*):

> The District Board for District 13 (including the Alabama mines) has ascertained

> and announced a minimum price schedule effective instanter; and had filed a schedule with the Commission. The immediate effect of this minimum price schedule was to deprive Alabama producers of markets * * *.

A letter to this Department from the National Bituminous Coal Commission advises that no minimum prices for District 13 have been established and that no such prices have been "authorized or approved by the Commission." The letter further states:

> An attempt by the District Board to establish such prices in violation of the provisions of the Act and the rules and regulations adopted by the Commission under authority thereof was abondoned in January. At the time of this attempt no computation of the proposed weighted average in the District had been ascertained nor had any such figures with the accompanying data been submitted to the Commission.

For the reasons stated, the Government respectfully submits that this Court should wholly disregard the brief filed as *amicus curiae* by Forney Johnston on behalf of 31 Alabama producers of bituminous coal.

STANLEY REED,
Solicitor General.
JOHN DICKINSON,
Assistant Attorney General.

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